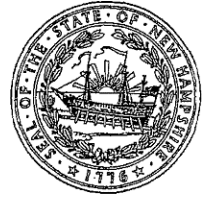




The State of New Hampshire
Department of Environmental Services
Air Resources Council

PO Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Appeals Clerk Telephone (603) 271-6072 - TDD Access: Relay NH 1-800-735-2964
DES Website: www.des.nh.gov - Council Website: www.des.state.nh.us/councils/



STATE OF NEW HAMPSHIRE
AIR RESOURCES COUNCIL

Decision & Order

Docket No. 04-04 ARC

Appeal of Working on Waste
In Re: Title V Permit No. TV-OP-050

Motion for Reconsideration Motion to Supplement Record

Background

On January 28, 2004, The NH Department of Environmental Services, Air Resources Division ("DES"), issued an approval of a Title V Operating Permit to Wheelabrator Claremont Company, L.P. located in Claremont, NH.

Pursuant to NH RSA 125-C:12, a person aggrieved by the decision of the commissioner granting or denying a permit application may within 10 days of the decision file an appeal with the Air Resources Council ("the Council").

Working on Waste ("WOW") is a self-described "Citizens' initiative working to promote sustainable resource management in Sullivan County."

On February 9, 2004, Ms. Katie Lajoie filed a Notice of Appeal with the Council on behalf of WOW ("Appellant"). In its appeal, the Appellant failed to provide any information relative to any member of WOW. The only address listed in the Notice of Appeal is a Post Office Box in Claremont, NH. The subject of the appeal is the Title V Operating Permit to Wheelabrator Claremont Company, L.P. located in Claremont, NH.

NH Code of Administrative Rules ENV-AC 206.03(b) specifies that a Notice of Appeal shall include, among other things, the legal name of each person seeking the relief and the residence address and principle place of business of such person.

On March 15, 2004, the Council voted 5-1 to Summarily Dismiss the appeal finding that the Appellant did not have standing to bring the appeal before the Council.

On March 25, 2004, the Council issued its written Decision & Order to dismiss the appeal. In the Decision & Order the Council found that “while several items required by NH Code of Administrative Rules ENV-AC 206.03(b) are deficient in the Appellants Notice of Appeal, in this decision, the Council directs its attention solely to the matter of the Appellants standing.” The Council found that in order for WOW to be granted standing before the Council, WOW must demonstrate that one or more of its members would have standing to bring an appeal before the Council independent of their representation by WOW. The Council found that the Appellants Notice of Appeal failed to identify *any* member of WOW, and as a result failed to prove standing before the Council. The Council ruled that it was the burden of the Appellant to establish standing by its pleadings before the Council. The Council noted that it established in its June 18, 2001 Decision & Order relative to the appeal of Environmental Action of Northern New Hampshire (See Docket No. 2000-23 ARC), and upheld by the NH Supreme Court on appeal (See Case No. 2002-0035), “For a party to bring an appeal before the Council, the petitioning party must demonstrate a proper standing in order to bring about the proceeding. That is to say the burden is upon the petitioning party to show direct affectation to the petitioner as a result of a decision of DES. The subsequent burden is then to show that the decision being appealed is in some way unlawful or unreasonable. A party is not presumed to have standing in issues which only a generalized harm to the public is the primary basis to allege standing.” (See Appeal of Richards, 134 N.H. 148 (1991).

Pursuant to Env-AC 208.01, any party aggrieved by a Council decision may, within 30 days from the date of the decision, petition the Council for reconsideration or rehearing.

On April 26, 2004, the Appellant filed a Motion for Reconsideration Motion to Supplement Record.

Discussion / Conclusion

NH Code of Administrative Rules Env-AC 208.01 Motion for Reconsideration or Rehearing states, among other things, that a Motion for Reconsideration “shall identify each error of fact, error of reasoning, or erroneous legal conclusion contained in the final order which the moving party wishes reconsidered, and concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party.” The Council finds that the Appellant failed, in its Motion for Reconsideration, to identify any error of fact, error of reasoning, or erroneous legal conclusion reached by the Council as required by Env-AC 208.01.

The Council reviewed all of the documents submitted with the Motion for Reconsideration. With respect to the issue of showing particular harm, the Council finds that the letters submitted by the various individual members of WOW show that all of them are subject to the same “generalized harm to the public” that anyone in the communities located within the general vicinity of the incinerator suffer.

Further, the Council recognizes that in its Motion for Reconsideration the Appellant argues certain constitutional issues as well as certain issues associated with the type of waste to be burned at the site. The Council is empowered by RSA 21-O:11 to hear and decide appeals from department decisions relative to the functions and responsibilities of the Division of Air Resources in accordance with RSA 21-O:14. The Council finds that as a matter of law it does not have jurisdiction to hear and rule on constitutional issues nor on waste management issues.

The Council finds that its March 25, 2004 Decision & Order to dismiss this appeal is correct and proper according to its statutes and rules.

Order

Motion for Reconsideration is DENIED.

Reconsideration

In accordance with RSA 541:6, this decision can be appealed by petitioning the State of New Hampshire Supreme Court within 30 days of the issuance of this decision.

So Ordered for the Council by:

COPY
Michael Sclafani, Appeals Clerk

June 8, 2004